

# BUTZEL LONG

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April 22, 2010

Via email/pdf to rdd.chambers@nysb.uscourts.gov

The Honorable Robert D. Drain  
United States Bankruptcy Court  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

**Re: *In re Delphi Corp., et al.*, 05-44481 (RDD) (Avoidance Actions to Recover Preferential Transfers)**

Dear Judge Drain:

This firm represents DPH Holdings Corp. and certain of its affiliated reorganized debtors (collectively, the “Plaintiffs”) in connection with more than one hundred preference actions now pending before this Court (collectively, the “BL Avoidance Actions”). The firm of Togut, Segal & Segal LLP also represents Plaintiffs in a number of preference actions (collectively, together with the BL Avoidance Actions, the “Avoidance Actions”) and joins in this letter. As the Court likely is aware, many defendants named in the Avoidance Actions (collectively, the “Defendants”) have already filed motions to dismiss such actions (collectively, the “Pending Dismissal Motions”). We write respectfully to request that the Court adopt a coordinated briefing and hearing schedule for motions to dismiss (as outlined below) which, we believe, will lead to the expeditious and efficient resolution of all such motions. The schedule proposed herein is the result of our collaboration with counsel for those Defendants that have filed Pending Dismissal Motions (collectively, the “Moving Defendants”) as well as certain other Defendants, and with their consent, we now request Your Honor’s endorsement of the proposed schedule.

To date, the Moving Defendants have filed ten (10) motions to dismiss and one (1) joinder. Plaintiffs have been informed that other Defendants will soon be filing additional motions to dismiss (collectively, including the Pending Dismissal Motions, the “Dismissal Motions”). The alleged grounds for dismissal have included personal jurisdiction, failure to plead with sufficient particularity, judicial estoppel and asserted due process violations. Many of

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the Moving Defendants' arguments overlap, and in some instances multiple Defendants have offered slightly different arguments in support of the same asserted ground for dismissal. Responses to some of the Pending Dismissal Motions are due on April 26, 2010, another response is due on May 3, 2010, and yet another response is due on May 28, 2010. Other Dismissal Motions do not specify a response date or, as noted, have not yet been filed. Some Pending Dismissal Motions are currently set to be heard on May 17, 2010, while another is scheduled for hearing on June 7, 2010. Still other Dismissal Motions have not yet been filed and therefore, of course, have not yet been scheduled for hearing.

Given these facts, Plaintiffs respectfully submit that the Court and all of the parties would benefit by fixing the following coordinated schedule (the "Schedule") relating to Dismissal Motions:

1. For those Defendants whose time to respond to the Avoidance Action complaints would otherwise run on or before May 14, 2010, Dismissal Motions shall instead be due no later than May 14, 2010. (Any Dismissal Motion that is filed on or before May 14, 2010 is hereinafter referred to as a "First Wave Dismissal Motion." Any Dismissal Motion that is filed after May 14, 2010 is hereinafter referred to as a "Second Wave Dismissal Motion");
2. The currently scheduled hearings on the Pending Dismissal Motions on May 17 and June 7, 2010 shall be adjourned to an omnibus hearing to be held on July 22, 2010, which shall be the scheduled hearing date for all First Wave Dismissal Motions;
3. Plaintiffs shall have the right to file, on or before June 7, 2010, a single Objection of up to fifty (50) pages in response to all First Wave Dismissal Motions;
4. The Moving Defendants and any other Defendants that may file a First Wave Dismissal Motion (collectively, the "First Wave Movants") shall have the right to file, on or before July 2, 2010, any reply briefs. For the avoidance of all doubt, two or more First Wave Movants may, but shall not be required to, file a combined reply brief, and such movants may file joinder(s) in other such reply briefs; and
5. The Court shall determine on a future date the procedures governing any Second Wave Dismissal Motions.

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We propose the foregoing Schedule as a means of coordinating the vast majority of Dismissal Motions in a fair and straightforward way. Because we merely request an extension, this Court has the power to grant it without notice or a hearing under Bankruptcy Rule 9006. Further, we believe that the proposed schedule will ultimately lighten the administrative and logistical burden on the Court with respect to the Avoidance Actions. If additional Dismissal Motions are filed after May 14, however, we may ask the Court to take further steps to facilitate a coordinated response.

Accordingly, on behalf of themselves, the Moving Defendants, and certain other Defendants, Plaintiffs respectfully ask the Court to approve and endorse the Schedule proposed.

Respectfully,

/s/ Eric B. Fisher

EBF/deg

cc: Attached Distribution List (via email)  
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